

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FOUR SEASONS ROOFING AND
REMODEL SERVICES INC., a Washington
Corporation,

Plaintiff,

vs.

UNITED SPECIALTY INSURANCE
COMPANY, a foreign insurance company,
EVANSTON INSURANCE COMPANY fka
ALTERRA EXCESS AND SURPLUS
COMPANY, a foreign corporation;
INTERNATIONAL INSURANCE
COMPANY OF HANOVER, a foreign
corporation; FIRST MERCURY
INSURANCE COMPANY, a foreign
corporation,

Defendant.

No.

**DEFENDANT FIRST MERCURY
INSURANCE COMPANY'S NOTICE
OF REMOVAL PURSUANT TO 28
U.S.C. §1441(a)**

TO: The Clerk of the United States District Court for the Western District of
Washington at Seattle

AND TO: Plaintiff, and her counsel of record, Rima I. Ghandour

Defendant International Insurance Company of Hanover, and its counsel of
record, Gary Sparling

1 Please take Notice that First Mercury Insurance Company (hereinafter referred to as
2 “FMIC”) hereby removes to this Court the state court action described below:

3 **I. THE SUBJECT ACTION**

4 1. On June 17, 2018, Plaintiff Four Seasons Roofing (hereinafter “Plaintiff”) began
5 an action in the Superior Court of Washington for Snohomish, which was assigned cause
6 number 19-2-05439-31. The Complaint named “First Mercury Insurance Company” as a
7 defendant, among others.

8 2. On June 24, 2019, Plaintiff filed an Amended Complaint. A copy of the
9 Amended Complaint is attached hereto as **Exhibit A**.

10 3. Plaintiff served a copy of an Amended Summons and the Amended Complaint
11 on the Washington Office of Insurance Commissioner of June 26, 2019. A copy of the
12 Amended Summons is attached hereto as **Exhibit B**. A copy of the Washington Office of
13 Insurance Commissioners’ Acceptance of Service is attached hereto as **Exhibit C**.

14 4. On July 2, 2019, FMIC received from the Office of Insurance Commissioner
15 Plaintiff’s Amended Summons and Amended Complaint.

16 **II. DIVERSITY OF CITIZENSHIP**

17 5. Plaintiff is Washington Corporation, with its principal place of business in the
18 State of Washington.

19 6. FMIC is a foreign insurance company organized under the laws of the State of
20 Delaware with its statutory place of business in the State of New Jersey.

21 7. Defendant United Specialty Insurance Company is foreign insurance company
22 organized under the laws of the State of Delaware with its principal place of business in the
23 State of Texas.

1 8. Defendant Evanston Insurance Company fka Alterra Excess and Surplus
2 Company organized under laws of the State of Illinois with its principal place of business in the
3 State of Illinois.

4 9. Defendant International Insurance Company of Hanover¹ is foreign company
5 organized under the laws of Germany with its principal place of business in Germany.

6 **III. AMOUNT IN CONTROVERSY**

7 10. In the Amended Complaint, Plaintiff alleges that on November 2, 2015, a suit
8 was filed by Marc Dahl and Julie Dahl against Plaintiff. See Exhibit A.

9 11. Plaintiff alleges that FMIC failed to respond to a tender for insurance coverage
10 for the claims the Dahls made against the Plaintiff.

11 12. FMIC never received a tender of the lawsuit filed by the Dahls against Plaintiff.

12 13. Upon information and belief, Plaintiff eventually entered into a stipulated
13 settlement and covenant not to execute with the Dahls, stipulating to a settlement of \$80,000
14 and assigning all rights against its insurance carriers to the Dahls.

15 14. Plaintiff then filed this matter against FMIC and other insurance carriers,
16 alleging both contractual and extra-contractual claims.

17 15. Plaintiff alleges claims against FMIC for Breach of Contract, Bad Faith,
18 Negligent Claims Handling, violation of the Consumer Protection Act, and violation of the
19 Washington Insurance Fair Conduct Act.

20 16. Plaintiff seeks damages, attorney fees, treble damages, exemplary damages up to
21 \$25,000 under the Consumer Protection Act, injunctive relief, interest and injunctive relief.

22
23 ¹ Plaintiff names as a Defendant “International Insurance Company of Hanover.” Upon information and belief, the intended defendant is “International Insurance Company of **Hannover**” (emphasis added).

17. The amount in controversy requirement may be satisfied by claims of general and unspecified damages, claims for attorney's fees authorized by law, and by punitive damages. *See, e.g., Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 946 (9th Cir. 2001); *Galt v. Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998). When an unspecified amount of damages is alleged, the court may consider facts contained in the removal petition to determine whether the amount in controversy requirement has been met. *Kroske*, 432 F. 3d at 980 (citing, *Singer v. State Farm Mutual Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

18. Based upon the allegations of the Amended Complaint and the terms of the stipulated settlement as between Plaintiff and the Dahls, the amount in controversy requirement has clearly been met in this matter.

IV. JURISDICTION

19. For purposes of determining jurisdiction under 28 U.S.C. § 1332:

- a. FMIC is a citizen of Delaware and New Jersey.
- b. Plaintiff is a citizen of Washington.
- c. Defendant United Specialty Insurance Company is citizen of Texas and Delaware.
- d. Defendant Evanston Insurance Company fka Alterra Excess and Surplus Company is a citizen of Illinois.
- e. Defendant International Insurance Company of Hanover is a citizen of Germany.

20. Based upon the forgoing, diversity is complete.

V. TIMELINESS

21. Plaintiff served the Amended Summons and Amended Complaint on the Office of Insurance Commissioner of June 26, 2019.

22. The Office of Insurance Commissioner delivered the Amended Summons and Amended Complaint to FMIC in July 2, 2019.

23. This Notice of Removal, filed on July 26, 2019, is timely under 28 U.S.C. §1446.

24. Counsel has appeared on behalf of Defendant International Insurance Company of Hannover and Evanston Insurance Company.

25. Both Defendants have consented to removal.

26. At this time, Counsel has not appeared for United Specialty Insurance Company.

VI. COPIES OF PROCESS, PLEADINGS, ORDERS, AND MOTIONS IN STATE COURT PROCEEDINGS

27. In accordance with 28 U.S.C. §1446, attached to this notice as Exhibits A through E are true and correct copies of the pleadings, process, orders, additional records, and additional proceedings in the Superior Court of Washington. These documents are:

- A. Amended Complaint;
- B. Amended Summons;
- C. The Office of Insurance Commissioner's Acceptance of Service;
and
- D. Notice of Appearance for First Mercury Insurance Company filed
by Thomas Lether, WSBA #18089;
- E. Notice of Appearance for United Specialty Insurance Company
filed by Gary Sparling, WSBA #23208;

1 F. Second Amended Complaint;

2 G. Second Amended Summons.

3 Notice of this removal will be filed with the Clerk of the Snohomish County
4 Superior Court and will be given to all other parties, in
5 accordance with 28 U.S.C. §1446.

6 DATED this 26th day of July, 2019.

7 s/ Thomas Lether

8 s/ Sam Colito

9 Thomas Lether, WSBA #18089

10 Sam Colito, WSBA #42529

11 1848 Westlake Ave N., STE 100

12 Seattle, WA 98109

13 P: 206-467-5444

14 F: 206-467-5544

15 tlether@letherlaw.com

16 scolito@letherlaw.com

17 *Counsel for Defendant FMIC*

18
19
20
21
22
23 **CERTIFICATE OF SERVICE**

1 The undersigned hereby certifies under the penalty of perjury under the laws of the
2 State of Washington that on this date I caused to be served in the manner noted below a true
3 and correct copy of the foregoing on the following party(ies):

4 Rima I. Ghandour
Ghandour Law
5 319 SW Washington Street, Suite 301
Portland, OR 97204
6 503-345-9255
rima@ghandourlaw.com
7 *Counsel for Plaintiff*

8 Gary Sparling
Soha and Lang
9 1325 4th Ave., Ste. 2000
Seattle, WA 98101
10 *Counsel for International Insurance Company of Hanover*

11 Michael McCormack
Jon S. Bogdanov
12 1700 Seventh Ave, Suite 1810
Seattle, WA 98101-1397
13 Michael.mccormack@bullivant.com
Jon.bogdanov@bullivant.com
14 *Counsel for Evanston Insurance Company*

15
16 **By:** ☒ **First Class Mail** ☒ **E-mail/ECF** ☐ **Legal Messenger**

17 Dated this 26th day of July, 2019 at Seattle, Washington.

18 s/Elizabeth Kruh
19 Elizabeth Kruh, Paralegal